

APPEAL NO. 031748
FILED AUGUST 21, 2003

This appeal arises pursuant to the Texas Workers' Compensation Act, TEX. LAB. CODE ANN. § 401.001 *et seq.* (1989 Act). A contested case hearing (CCH) was held on May 28, 2003. The hearing officer determined that the appellant (claimant) did not sustain a compensable injury on _____ or _____, and did not have disability. The claimant appeals on sufficiency of the evidence grounds, and asserts that the hearing officer decided an issue that was not before him when he decided that the claimant did not sustain an injury on _____. The respondent (carrier) responds, urging affirmance.

DECISION

Affirmed, as reformed.

The claimant has objected to the hearing officer's finding that the claimant did not sustain a new injury to his right knee on _____, because that was not an issue that was raised at the benefit review conference (BRC), nor was it tried by consent, or added at the CCH upon a finding of good cause. Section 410.151(b) precludes consideration of an issue not raised at the BRC unless the parties consent or the Texas Workers' Compensation Commission determines that there was good cause for not raising the issue at the BRC. We agree that the hearing officer did not have an issue before him concerning an injury on _____, and will regard his Finding of Fact No. 6 and so much of his Decision as relates to _____, as surplusage, and reform the decision accordingly.

Whether the claimant sustained a compensable injury and had disability are factual questions for the hearing officer to resolve. The hearing officer, as finder of fact, is the sole judge of the relevance and materiality of the evidence as well as the weight and credibility that is to be given to the evidence. Section 410.165(a). The Appeals Panel will not disturb the challenged factual findings of a hearing officer unless they are so against the great weight and preponderance of the evidence as to be clearly wrong or manifestly unjust. Cain v. Bain, 709 S.W.2d 175, 176 (Tex. 1986); In re King's Estate, 150 Tex. 662, 244 S.W.2d 660 (1951). We have reviewed the matters complained of on appeal and conclude that the hearing officer's decision is supported by sufficient evidence.

Because we have affirmed the hearing officer's determination that the claimant did not sustain a compensable injury, we likewise affirm his decision that the claimant did not have disability. By definition, the existence of a compensable injury is a prerequisite to a finding of disability. Section 401.011(16).

We affirm the decision and order of the hearing officer, as reformed.

The true corporate name of the insurance carrier is **TEXAS MUTUAL INSURANCE COMPANY** and the name and address of its registered agent for service of process is

**MR. RUSSELL R. OLIVER, PRESIDENT
221 WEST 6TH STREET
AUSTIN, TEXAS 78701.**

Michael B. McShane
Appeals Panel
Manager/Judge

CONCUR:

Judy L. S. Barnes
Appeals Judge

Thomas A. Knapp
Appeals Judge